

Valley Regional Real Estate, Inc.

v.

City of Claremont

Docket No.: 9449-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$368,400 (land \$100; buildings \$368,300) on its real estate at 4 Dunning Street, consisting of a 2,150 square-foot professional and retail drug store known as VRX Pharmacy (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried its burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the 1989 valuation increased 2.14 times from the 1988 equalized value;
- (2) the building cost \$75.25 per square foot to build in 1988; 1990 estimated cost to build is \$90.00 per square foot -- yet it is assessed at \$171.35 per square foot; and

Page 2

Valley Regional Real Estate v. City of Claremont

Docket No.: 9449-90PT

(3) an appraisal relying on the income approach estimated the market value at \$185,000.

The City argued the assessment was proper because:

(1) the Property is similar to a retail condominium due to its location being next to a 36 bed hospital, an outpatient care center, a day care center, a doctor's clinic and a nearby 56 bed nursing home;

(2) the Taxpayer's \$75.25 per square foot construction cost was for the entire 12,000 square foot building and does not include consideration for the value of the land; and

(3) the tenant of the Property in question, the RX Pharmacy, is a retail organization affiliated with the real estate holding company (Valley Regional Real Estate, Inc.); therefore the expense and rental information as provided by the Taxpayer is not necessarily representative of the market.

Subsequent to the hearing and at the board's request, the City submitted a revised assessment for the Property correcting several of the physical aspects of the Property that had been incorrectly listed in the original assessment. The revised assessment was reduced to \$345,000.

Board's Rulings

This Property presents a unique assessment challenge because not only is the Property in question (2150 square feet of pharmacy space) the only taxable portion of an otherwise tax exempt building of 16,500 square feet, but it is also located in a campus setting surrounded by various tax exempt health care facilities.

Ideally, the most appropriate approach to value would be the income approach. This approach would recognize the value of this distinct portion of real estate and capture the value not only related to the building but also to its location and visibility.

However, the board is unable to arrive at a credible estimate by income approach based on the evidence submitted by both parties relative to the income approach for the following reasons:

(1) the Taxpayer's appraiser's methodology relies on the contract rent rather than market rent; since the tenant, VRX Pharmacy, is affiliated with the Taxpayer, such contract rent is suspect unless supporting market data is applied;

(2) the Taxpayer's appraiser allocated the expenses for the VRX Pharmacy based on comparing the pharmacy's income to the total income of the building; while this allocation method may be reasonable if indeed the expenses could be attributed proportionally amongst the various tenants, the evidence is to the contrary; the entire structure is comprised of an older brick section and a newer wood frame section in which the pharmacy is located, and the different sections could conceivably incur differing portions of the expenses;

(3) the Taxpayer's detail of expenses submitted subsequent to the hearing did not adequately explain how those expenses could be allocated to the pharmacy; further the detail of expenses contained one item "lease expense" of nearly \$47,000, the largest expense item of all, with no explanation as to what this lease expense

Valley Regional Real Estate v. City of Claremont

Docket No.: 9449-90PT

pertains to; the board is unable, therefore, to determine from the expenses submitted by the Taxpayer what are reasonable market expenses related to the pharmacy portion of the building;

(4) the City's expense calculations were only estimates as they indicated that they had had difficulty in obtaining more detailed expense information relative to this property; further some expenses, such as management and legal expenses were omitted by the City; and

(5) the capitalization rates submitted by the City were not substantiated by any market information related to interest rates and investment rates.

Because of the inadequacy of the data related to the income approach, the board is hesitant to attempt to estimate a value by the income approach. Such an attempt would involve a questionable patchwork approach of trying to assemble in a meaningful way different components from the arguments and to arrive at an indicated value.

Rather, the board finds that the City submitted adequate sales data of adjacent professional condominiums to provide a reasonable basis for estimating market value for the subject Property. Three sales of condominium doctor offices occurred in slightly inferior buildings and locations during 1990 and 1991. These sales indicated a per square foot price of approximately \$86 to \$98 per square foot for condominium doctor's office space. While the pharmacy is not structured in a condominium form of ownership, the rights and interests to be appraised are similar to a condominium because they include not only the building but also the land, location and visibility that a

Page 5

Valley Regional Real Estate v. City of Claremont

Docket No.: 9449-90PT

condominium type of sale reflects.

Valley Regional Real Estate v. City of Claremont

Docket No.: 9449-90PT

Based on the evidence, the board finds the Property's location and quality of construction is slightly superior to the doctor office condominiums across the street. Therefore the board finds the \$65 per square foot used by the City for the doctor office condominium is a reasonable beginning base rate to be applied to the pharmacy, but that in addition, a size adjustment factor of 1.35 should be applied and a grade factor also of 1.35 should be applied to recognize the Property's superior construction and location. These two factors multiplied by the base rate of \$65 per square foot result in a effective base rate of \$118.46 per square foot and an assessed value indication of \$254,700 (2,150 x \$118,46).

Based on a review of all the evidence submitted by the parties, this assessment of \$254,700 appears to be a reasonable estimate of the Property's market value. As earlier stated, this Property is indeed unique and presents a challenge in arriving at the proper assessment. On balance, however, given all the cost, market and income evidence submitted in the case, the board finds the assessment of \$254,700 is a more proportional estimate of the Property's share of the tax burden than the City's assessment.

If the taxes have been paid, the amount paid on the value in excess of \$254,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1991, 1992 and 1993. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years

Page 7

Valley Regional Real Estate v. City of Claremont

Docket No.: 9449-90PT

with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Page 8

Valley Regional Real Estate v. City of Claremont

Docket No.: 9449-90PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard P. Madigan, Treasurer of Valley Regional Real Estate, Inc., Taxpayer; and Office of the Assessor, City of Claremont.

Dated: December 30, 1993

0008

Valerie B. Lanigan, Clerk